

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.781 OF 1985

Corporation Bank .. Plaintiffs

Vs.

Rasiklal Chimanlal and Anr. .. Defendants

Mr.Hatim i/b M/s.Nandlal Kothari and Sabir for
the plaintiffs

None for the defendants

CORAM : S.U.KAMDAR, J

DATED : 4TH JULY, 2005

P.C.:

1. The present suit has been filed by the plaintiff for the recovery of Rs.1,60,774.88 alongwith interest @ 20% p.a.compounded quarterly.Some of the material facts of the present case are briefly set out as under:

2. Some time in or about 14.10.78 defendant no.2 approached the plaintiffs for various financial facilities. Defendant no.1 is a sole proprietorship concern of the defendant no.2.

Defendant no.2 wanted to open a current account in the name of defendant no.1. On 14.10.78, plaintiff bank granted temporary Overdraft facility in the current account of defendant no.1. The said amount was advanced as loan to the defendant no.1 by the plaintiffs. In respect of the said current account bearing no.667, defendant no.2 executed a letter of proprietorship dt.14.10.78 declaring that he is a proprietor of defendant no.1 form. He has further executed a letter of authority in favour of the plaintiff authorising one Mr.Surendra Kumar Shah as General Power of Attorney holder of defendant no.2 to operate the said current account no.667. In pursuance thereto, the said current account was operated under Overdraft facility. The said account was overdrawn from time to time as financial assistance. It was found that in the foot of the account there was outstanding amount due and payable by the defendant to the plaintiff of sum of Rs.1,60,774.88 inclusive of interest and other incidental charges.

3. The learned counsel for the defendants, M/s.Khona & Kayser informed the court that they no

more represent the defendants herein. Pursuant thereto, I directed the plaintiffs to serve affidavit of evidence and compilation of documents on the defendants directly. Affidavit of service dt.4.7.05 has been filed by the plaintiff which interalia indicates that the defendant is not available at the last known address and the new address is also not available.

4. In the aforesaid circumstances, I take the affidavit of evidence dt.18.6.05 alongwith compilation of original documents which is marked as Ex.P-1 collectively on record. The evidence of the plaintiff has gone unchallenged. Defendants are not appearing in the matter though they are served. They were given various opportunities from time to time. However, still they are not appearing in the matter. In the aforesaid circumstances, I accept the case of the plaintiffs. I accept the documents as well as examination laid by him.

5. I therefore, pass the following order. There shall be decree in favour of the plaintiff

and against the defendant in terms of prayer clause
(a) and (b).